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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970
NO. 573

Governor Reubin O'D. Askew, et al.,

Appellants,

—v.—

Robert H. Hargrave, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

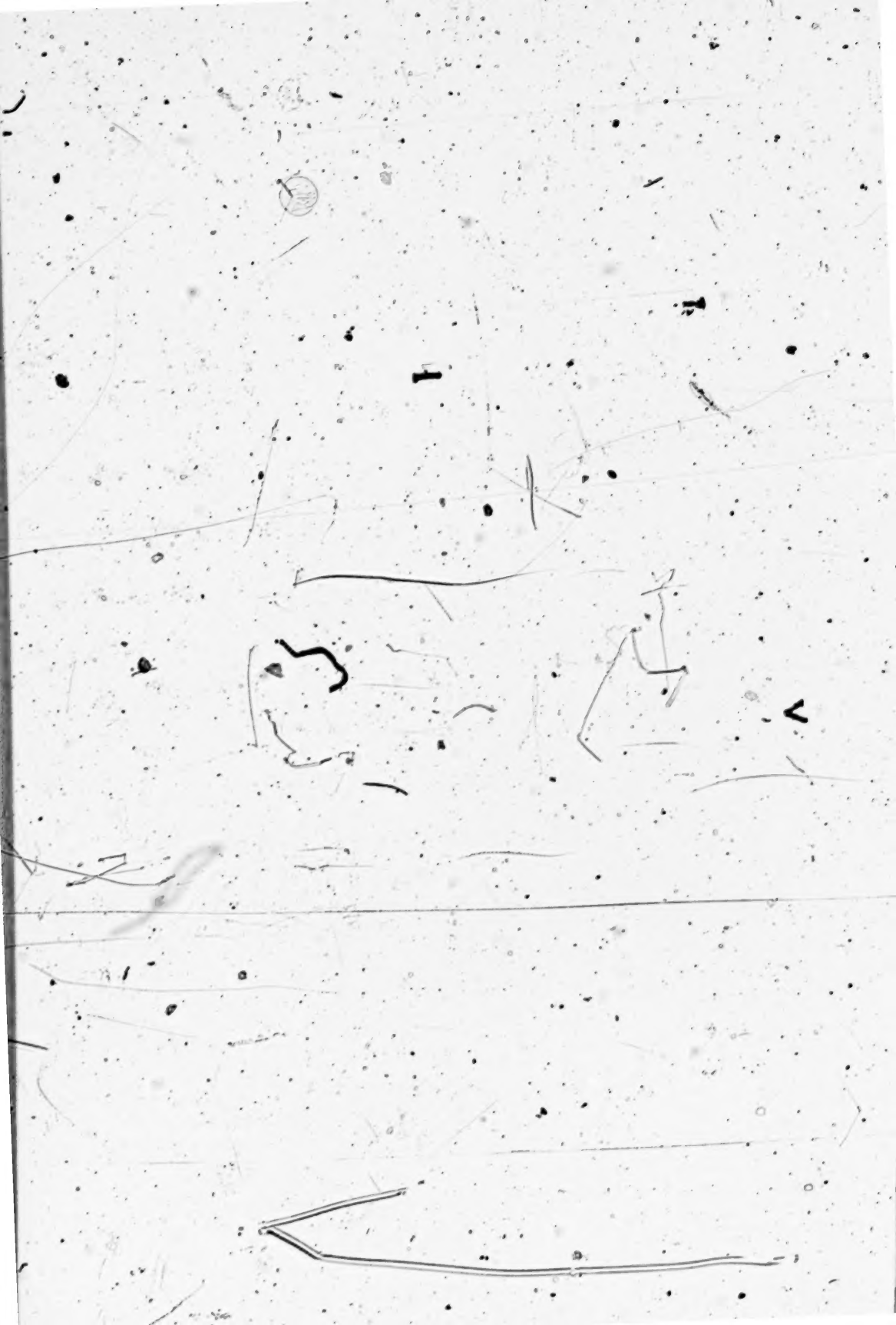
REPLY BRIEF OF APPELLANTS

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ARGUMENT

I.

APPELLEES CREATE A MISLEADING IMPRESSION OF THE EFFECT OF THE MILLAGE ROLLBACK ACT.

Throughout the instant proceedings appellees have asserted that the so-called Millage Rollback Law violates the equal protection clause of the Fourteenth Amendment because "it fails to provide Florida children with an economically equal educational opportunity."[1]

Appellees' arguments, while scholarly in content and artfully presented, contain not a whit or scintilla of support for the

[1] Plaintiffs' Brief in Support of Motion for Summary Judgment, page 5, document #282, original file.

proposition that Florida school children are, in fact, being economically shortchanged. They attempt to induce the Court to examine, entirely out of context, a single sentence in a complex legislative enactment. They go to exhaustive lengths to isolate local funding from the overall picture of school financing in Florida. The end product of their theoretical distinctions and strained analogies is a distorted picture of the effect of the Millage Rollback Law in the overall legislative context in which it was enacted.

In this reply brief we shall attempt to restore some semblance of perspective to educational financing in Florida.

Financing public education in Florida is a state responsibility, and in making "adequate provision" for a "uniform system of free public schools" the legislature has the responsibility for making the ultimate determination of what revenue sources should be used in carrying out this state responsibility.[2]

The Millage Rollback Act was the twenty-third section of a complex school finance bill passed at the Extraordinary Session of the Florida Legislature convened in February, 1968 to deal with educational problems.[3]

It is axiomatic in the law that the validity of a statute must be determined in its overall context, giving due consideration to its operation and practical effect. The validity of a single, isolated provision cannot be determined *in vacuo*, ignoring its relationship to other parts of the same act and to related legislation.

Appellees would urge their own narrowly channeled vision on the Court by focusing on a single sentence in a complex legislative enactment. They would mask the equalizing bene-

[2] Article IX, Section 1, Constitution of Florida.

[3] Chapter 68-18, Laws of Florida.

fits that were produced by the self-same legislative act of which they complain, thus creating a misleading impression of the effect of the provision under attack in the overall context of Florida school financing legislation.

Appellees go to elaborate length to explore discrimination in theory. For reasons of their own, they do not speak to the question of whether Florida in fact discriminates against the school children in its property poor counties.

II.

SECTION 236.251, FLORIDA STATUTES, CONSIDERED IN ITS ENTIRETY AND IN CONTEXT WITH OTHER PROVISIONS OF THE MINIMUM FOUNDATION PROGRAM, HAD THE EFFECT OF DIMINISHING EXISTING INEQUALITIES IN EDUCATIONAL FUNDING AMONG FLORIDA COUNTIES.

In quoting the statute under attack, Appellees decline to go the extra mile, so to speak. They fail to point out to the Court that the next sentence in the enactment guarantees to every county an increase in total funds of at least $1,000.00 per instructional unit.[4] They assert that "measured by the reduction in millage from the year preceding the enactment of the Millage Rollback Act [1967-1968] the loss [sustained by counties whose millage was reduced] was well in excess of $50,000,000."[5] This statement creates the impression that the amount of school funds available to the various counties was actually reduced by this legislation.

The table presented by appellees purports to show the "approximate dollar reduction" suffered by each of the listed

[4] Section 23 of Chapter 68-18, Laws of Florida.

[5] Appellees' Brief, page 12.

counties.[6] Again, the impression meant to be conveyed is that the overall effect of the legislative formula of which Section 236.251, Florida Statutes, was a part, was to deprive poor counties of educational funds.

The net effect of the 1968 educational financing enactments was not only to make up for the loss of funds suffered by the counties required to reduce local millage but to greatly increase the moneys available to the counties on a per pupil basis.

The following table shows the actual overall effect of the 1968 legislation on the same counties listed by Appellees on page 13 of their brief.

	*Total Expenditures 1967-68**	*Total Expenditures 1968-69**	*Net Increase Total Funds 1968-69 over 1967-68*
Alachua	$498	$615	$ 2,690,638
Brevard	553	602	3,729,572
Broward	569	709	16,954,327
Collier	687	860	1,504,746
Columbia	523	679	1,011,862
Dade	669	748	29,156,301
Dixie	620	759	235,123
Duval	496	576	9,430,175
Escambia	476	576	4,690,773
Gadsden	440	589	1,533,917
Gulf	562	720	435,167
Hernando	603	721	458,123
Hillsborough	532	604	7,977,144
Leon	528	683	3,155,677
Manatee	587	721	2,280,876
Nassau	494	633	907,646

*Figures expressed in dollars per pupil.

[6] Appellees' Brief, Page 13.

	Total Expenditures 1967-68	*Total Expenditures 1968-69*	*Net Increase Total Funds 1968-69 over 1967-68*
Orange	$515	$628	$9,403,838
Pasco	501	582	1,123,136
Pinellas	615	695	8,163,152
Putnam	524	638	1,280,610
Seminole	461	572	2,102,749
Taylor	569	697	551,018
Volusia	569	661	3,356,176
Walton	514	635	393,679
State Average	564	673	
		TOTAL	$112,526,425[7]

Instead of a decrease of in excess of $50,000,000.00 as asserted by appellees, the amount available to the counties listed on page 13 of Appellees' brief was actually increased by more than $112,000,000.00 over and above that amount asserted by appellees to have been lost by virtue of the Millage Rollback Act. In the case of many of the counties listed, the increase of the total funds available per child was more than 25%, and in terms of millage equivalent, the amount gained was much greater than the amount shown by appellees as having been lost.

For example, Gadsden County is shown as having been required to decrease its millage by 5.05 mills and as suffering an approximate dollar reduction of $343,313.00. Although Gadsden County's millage was reduced, the net effect of the legislation was to increase its available funds to the point where its total expenditure per child was increased by more than 30%. This is the amount that would have been raised by an increase of 21.4 mills over the millage previously levied in

[7] The dollar amounts shown in column three were provided by the State of Florida, Department of Education.

Gadsden County. Thus, instead of losing funds, the counties listed by appellees in their brief gained vastly more funds than they could have raised by increasing their millages to impossibly high levels.

III.

THE MILLAGE ROLLBACK ACT RESULTED IN FURTHER EQUALIZATION IN 1970.

As legislative efforts to improve the financial structure of Florida's public schools are continuing in nature, the Florida Legislature again addressed itself to the problem during the 1970 Session.

A special *ad hoc* public school financing committee recommended that the state assume an even greater responsibility for public school financing. Its proposals were eventually enacted as the 1970 School Equalization Act.[8] This act recognized the state's primary responsibility for resolving the inter-related problems of providing adequate funding and equalizing support among school districts. It included a four-year plan for: (a) phasing an increased share of local property tax levies into equalizing state funding formulas, (b) improving the overall level of state support, and (c) enforcing fair assessment practices among the several school districts.

The School Equalization Act provided for immediate increases in the level of M. F. P. support. Beginning in 1970-71, the value of an instruction unit was raised $1,100.00 for each of the next four years.[9] Thus, under the Act, the average

[8] Chapter 70-94, Laws of Florida.

[9] Section 236.07(5), Florida Statutes, as amended by Chapter 70-94, Laws of Florida.

value of an instruction unit will rise from $9,700.00 in 1969-70 to $14,100.00 in 1973-74.[10]

The School Equalization Act placed an increasing proportion of local property taxes into the state funding formula, thus reducing the inequities in total support between districts. At the same time, increases in local effort were placed into school funding formulas on the basis of uniform property assessment standards as determined by an independent study. Moreover, protections were built into the law to minimize losses in wealthy districts at the same time resource allocations were substantially raised in property poor school districts. When taken in the context of a four-year mandate of improved support, this state funding formula will provide the degree of equalization sought by both appellants and appellees, equalization impossible to achieve solely through local property tax increases.

The overall effect of the 1970 School Equalization Act on the eight poorest counties in the state and the eight wealthiest ones is shown by the following tables:[11]

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[10] This figure is obtained by adding $1,100 per annum to the present worth of the instruction unit, which worth is approximately $9,700.

[11] The estimated gain, loss and expenditure figures used in compiling this chart were furnished by the State of Florida, Department of Education.

Eight Poorest Counties in Assessed Value Per Pupil ADA

County	Adjusted Value of Mill per ADA	Estimated Gain in Expenditure per ADA	Estimated Expenditure per ADA	Value of Gain in Millage Equivalents
Gadsden	$ 8.21	$129	$752	15.7
Madison	11.85	53	734	4.5
Okaloosa	13.50	101	694	7.5
Holmes	14.01	58	784	4.1
Clay	15.09	48	643	3.2
Jefferson	15.21	53	778	3.4
Jackson	15.71	57	737	3.7
Bradford	16.11	108	849	6.7

Eight Wealthiest Counties in Assessed Values per Pupil ADA

County	Adjusted Value of Mill per ADA	Estimated Loss in 1970-71 per ADA	Estimated Expenditure per ADA	Value of Loss in Millage Equivalents
Glades	$89.69	24	$1,112	.3
Charlotte	87.36	63	806	.7
Collier	79.75	56	1,034	.5
Martin	60.84	34	718	.6
Sarasota	58.15	19	860	.3
Flagler	55.19	30	738	.5
Palm Beach	52.69	5	878	.1
Monroe	47.23	5	725	.1
State average	30.36		799	

The net effect of the Florida legislation, considered as a whole, including the Millage Rollback Act, has been to increase dramatically the proportion of school funds provided by the state and to greatly diminish the effect of inter-county inequities resulting from the differences in assessed values per pupil.

The Millage Rollback Act was one of the primary forces giving impetus to this trend. The tables above demonstrate the wide variations in property values from county to county, and, consequently, in the ability of the counties to raise school funds by levying property taxes. A 1 mill levy in Gadsden County produces $8.21; whereas a similar levy in Glades County produces $89.60. Therefore, reliance on the property tax is inherently disequalizing. Any encouragement of such reliance has a deterrent effect on ultimate equalization.

For purposes of illustration, suppose, as appellees suggest,[12] that Florida provided each child in average daily attendance in her schools with an equal number of dollars, say $400.00. Assume also, as appellees seek, no limit on the amount of millage a given county might impose upon its property owners. If each of Florida's eight poorest counties and each of its eight wealthiest counties increased its millage to 15 mills, the following inequities would result:

[12] Footnote 23, page 20, of Appellees' Brief. Also, see Appellees' Brief, page 44.

EIGHT POOREST COUNTIES

County	*Value of mill per pupil in ADA*	*State expenditure per pupil in ADA*	*Amount raised per pupil locally from 15 mill levy*	*Total expenditure per pupil*
Gadsden	$ 8.21	$400	$ 123	$ 523
Madison	11.85	400	177	577
Okaloosa	13.50	400	203	603
Holmes	14.01	400	210	610
Clay	15.09	400	225	625
Jefferson	15.21	400	228	628
Jackson	15.71	400	236	636
Bradford	16.11	400	242	642

EIGHT WEALTHIEST COUNTIES

Glades	$89.69	$400	$1,344	$1,744
Charlotte	87.36	400	1,310	1,710
Collier	79.75	400	1,196	1,596
Martin	60.84	400	912	1,312
Sarasota	58.15	400	872	1,272
Flagler	55.19	400	827	1,227
Palm Beach	52.69	400	789	1,189
Monroe	47.23	400	708	1,108

Thus, in terms of total funding, a plan such as appellees suggest would only compound and magnify the very inequalities Florida has been striving mightily to correct. To revert to the simplism with which appellees fault us, such a plan would provide Florida's richest county, Glades, with 333% more money with which to educate each pupil than that available in Florida's poorest county, Gadsden.

The effect of the Millage Rollback Act has been to reduce these wide variations. For 1970-71, 52 out of the 67 Florida

counties are levying 10 mills or slightly more.[13] Only four counties are levying less than 8 mills.

With the great majority of the counties at the millage ceiling, all of them must look to state sources for additional funds. This would not be the case without the ceiling. If the Millage Rollback Act did not exist, wealthy counties could gain substantial additional funds from small additional local property levies and they would have no incentive to press for additional state funding. The disequalizing effect which this would have is demonstrated by the chart above.

The purely formalistic equality ordered by the judgment of the court below fails to take into account the wisdom of Mr. Justice Frankfurter's observation in *Dennis v. U.S.*, 399 U.S. 162, 184, that "... there is no greater inequality than the equal treatment of unequals." Invalidating the Rollback Act in the name of equality is reminiscent of the observation by Anatole France that, "the law in its majestic equality forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread."

IV.

THE PROBLEM OF MEASURING EQUALITY AND ECONOMIC EDUCATIONAL OPPORTUNITY IS TOO COMPLEX TO PERMIT A SINGLE FACET OF THE PROBLEM TO BE VIEWED IN ISOLATION.

School finance is a highly complex subject. Its revenue raising aspects require a delicate balancing of educational needs with other facets of public policy. The dis-equalizing effects of relying on local revenues have already been demonstrated. There are other problems as well.

[13] Figures supplied by the State of Florida, Department of Education.

Use of state funds has an equalizing effect. But state revenues must be raised before they can be distributed. There is often delay between the time when need for additional state funds is recognized and a new source of revenue is found. The problems of selecting a revenue source at the state level are complex. What taxes should be used to raise revenue and what proportion should be contributed by each?

Until it becomes practical to effect a more complex program of equalization such as the "power equalizer" plan advocated by Messrs. Coons, Clune and Sugarman,[14] some balance must be achieved in the proportion of state and local revenues used to finance schools. This balance must be worked out by legislative action. In discussing possible judicial remedies for discrimination based on wealth, they make the following observations (p. 293):

"The second problem of preemption is that of excessive limitation by the court of legislative alternatives. How far should the court specify forms of legislation that do satisfy the Constitution? Some partisans in school finance cases urge prescription in detail of the very form and structure of school finance for the states. That hope is probably vain; if not, it is merely horrifying. **Perhaps the worst service the court could render would be the enunciation of a principle that would leave the state no flexibility in its choice of financial structure for education.** For example, requiring equality of expenditures per pupil statewide might be a catchy device for terminating the existing injustices; it might also be an effective way to terminate public education. There is certainly no question that such a solution could pretermit forever the

[14] Coons, Clune and Sugarman, *Private Wealth and Public Education*, (Harvard University Press, 1970).

possibility of legislative re-examination of a host of alternatives to the rejected order of things. There is great virtue in the court's confining itself whenever possible to minimal proscriptions in the interest of legislative flexibility . . . . (Emphasis added)

"In summary, the best service the court can perform is four-fold: (1) break the logjam of the status quo and thus free the state from a politically immovable system; (2) give the state wide latitude in its re-examination of the finance problem; (3) speak with clarity in a standard capable of intelligent interpretation; (4) remain keenly sensitive to the likely legislative and popular responses to the various forms its decisions and orders might take. We happily endorse the monition of Phillip Kurland: 'Let's place the responsibility where it belongs. Let's permit the state an opportunity to experiment with different answers to these difficult problems and free them to undertake the experiment.' "

If Florida school financing arrangements are to be measured against the proscriptions of the Fourteenth Amendment, they should be viewed in their overall context in a proceding which directly raises the question of whether a state is, in fact, discriminating against its citizens by making the quality of education a function of wealth. (See Coons, Clune, and Sugarman at p. 304).

The question of whether the Fourteenth Amendment has been violated cannot be determined formalistically by viewing out of context a single aspect of the broad picture of Florida school finance. The judgment of the court below has invalidated, on purely theoretical grounds, an integral part of Florida's school finance program. In so doing, it has turned the blade inward and used the Fourteenth Amendment to frustrate attempts by the Florida Legislature to promote state-wide equality in education.

We would respectfully urge upon the court that it permit us to retain our flexibility as we cast about to find solutions to the problem of financing public education in Florida. Given the freedom to explore alternatives, we shall continue to press on toward the goal both we and appellees seek for Florida children—an equal economic educational opportunity.

CONCLUSION

For the reasons contained herein and in Brief of Appellants, this Court should reverse the judgment below.

Respectfully submitted,

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